

DATE: June 25, 2021

TO: ALL INTERESTED PARTIES

/s/ **SUZANNE M. AMBROSE**

FROM: Suzanne M. Ambrose
Executive Officer

SUBJECT: NOTICE OF PROPOSED REGULATIONS

Notice is hereby given that the State Personnel Board (Board) proposes to adopt Section 13 and amend Sections 26, 78, 78.1, 249, 250, and 250.1 to clarify the Rules related to record retention requirements; selection process; hiring process; job-related criteria; determining merit and fitness during the hiring process; and skills-based certification. (Cal. Code Regs., tit. 2, §§ 26, 78, 78.1, 249, 250, and 250.1.)

PUBLIC HEARING:

A public hearing regarding the proposed regulatory action will be on August 10, 2021, at 10:00 a.m. via WebEx. In order to participate in the public hearing, please see the following options:

- Via Video (Online)

You may click, or copy and paste into your web browser, the following link:

<https://spbmeetings.webex.com/spb-meetings/j.php?MTID=m3910d9169230b21062a8e8a34328e584>

Then enter the following information to gain access to the hearing:

Meeting Number: **182 839 0501**

Meeting password: **Df8Mq3Nx42P**

- Via Telephone

You may also participate by dialing the phone number first and then the participant code listed below:

Phone Number: **+1-408-418-9388**

Participant Code: **1828390501**

The telephonic conference to be used for the public hearing is accessible to persons with mobility impairment. Persons with sight or hearing impairments are requested to notify the contact person for these hearings (listed below) in order to make specific arrangements, if necessary.

WRITTEN COMMENT PERIOD:

Any interested party, or his or her duly authorized representative, may submit written comments relevant to the proposed regulatory action to the contact person listed below.

Lori Gillihan, Chief
Policy Division
State Personnel Board
801 Capitol Mall

Email: lori.gillihan@spb.ca.gov

The written comment period closes on August 9, 2021. Only written comments received by that time shall be reviewed and considered by the Board before it adopts, amends, or repeals a regulation.

AUTHORITY AND REFERENCE:

The Board proposes to adopt Section 13 and amend Sections 26, 78, 78.1, 249, 250 and 250.1 of Title 2, Chapter 1 of the CCR pursuant to the authority vested in it by the California Constitution, article 7, section 3, and Government Code sections 18211, 18502, 18660, 18701 and 18900.6. The proposed regulations will implement, interpret, and make specific the provisions of Government Code sections 18573, 18661, 18900.6, 19050, 19232 and 19702.2.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW:

The Board is a constitutional body responsible for enforcing California's civil service statutes. (Cal. Const., art. VII, §§ 1, subd. (b) & 3; Gov. Code, § 18660.) In addition, the Board, by majority vote of all its members, prescribes probationary periods and classifications, adopts other rules authorized by statute, and reviews disciplinary actions imposed against state employees. (*Ibid.*)

Regulations adopted by the Board are exempt from the Administrative Procedure Act (APA), except as expressly specified. (Gov. Code, §§ 18211, 18215, & 18216.)

The purpose of this regulatory action is to update the Board's regulations to remove the more burdensome aspects and develop a stronger and more nimble merit civil service system. The regulations will be clarified to help appointing powers accurately interpret and apply the hiring process requirements, namely concerning application screening criteria and interview rating criteria.

The benefits of this regulatory change include: (1) making the hiring process a more flexible and qualitative process designed to determine which eligible candidate is the best fit and (2) conserving the fiscal interests of the state by clarifying the Board's hiring and selection process standards.

Section 13 is adopted to define the words "shall," "should," "may," and "best practices," for the purposes of determining whether compliance with a law, regulation, rule, or policy is achieved.

Section 26 is amended to clarify which types of merit, selection, and appointment records shall be retained. Reference to application screening criteria, interview rating criteria, interview questions, interview scoring or rating sheets, pre-employment background checks, and reference checks will be removed and replaced with "selection instrument(s) or procedure(s) used."

Section 78 is amended to remove reference to the screening and rating of a candidate's qualifications. Proposed section 78.1 already includes references to the appointing power's obligation to use activities, instruments, or procedures that fairly and objectively

assess a candidate's qualifications. Therefore, referencing the screening and rating of a candidate's qualifications in section 78 is redundant.

Section 78.1 is amended so that appointing powers will more easily understand the distinction between the components of the examination process and the hiring process. Currently, the section defines the hiring process as having both performance tests and written tests. Deleting the word "tests" from the section should eliminate any confusion. The section will also include clarifying language that appointing powers may use whatever methods they consider appropriate to assess candidates' qualifications during the hiring process.

Section 249 is amended and re-titled "Job-Related Criteria." The amended section will make clear that the appointing power shall use job-related information to establish the criteria used to assess and compare the qualifications of candidates in a consistent and equitable manner through whatever selection instrument(s) or procedure(s) used.

Section 250 is amended so that the process of determining merit and fitness during the hiring process is more dependent on the candidates demonstrating that they possess the knowledge, skills, abilities, and personal characteristics required for the position through a variety of available selection methods, including a hiring interview, standardized performance demonstrations, written exercises, role plays or other selection instruments. The selection instruments used by the appointing power to form the basis of the hiring decision shall be well-documented and clearly demonstrate the reasons for the hiring decision. Section 250 was also amended to clarify the distinction between the examination and hiring process by deleting the word "tests" to describe selection methods.

Section 250.1 is amended to make the hiring process in Skills Based Certifications consistent with section 250.

FISCAL IMPACT ON PUBLIC AGENCIES:

- Mandate on local agencies and school districts: None.
- Cost to any local agency or school district that must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

- Cost or savings to any State agency: None, since State agencies are currently required to record and maintain certain documents and files related to personal services contracts.
- Other nondiscretionary cost or savings imposed on local agencies: None.
- Cost or savings in federal funding to the State: None.

SIGNIFICANT EFFECT ON HOUSING COSTS:

None.

ECONOMIC IMPACT ON BUSINESS:

- Significant, statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states: None.
- Effect on small business: None.

COST IMPACT ON A REPRESENTATIVE PRIVATE PERSON OR BUSINESS:

The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action since the regulatory change only impacts the Board's procedures for record retention requirements, selection process, hiring process, job-related criteria, determining merit and fitness during the hiring process, and skills-based certification.

RESULTS OF ECONOMIC IMPACT ASSESSMENT:

Adoption of these regulations will not:

1. Create or eliminate jobs within California.
2. Create new businesses or eliminate existing businesses within California.
3. Affect the expansion of businesses currently doing business within California.
4. Affect worker safety or the state's environment.

CONSIDERATION OF ALTERNATIVES:

The Board must determine that no reasonable alternative it considered or that is otherwise identified and brought to its attention would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more costeffective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

CONTACT PERSONS:

Inquiries concerning the proposed regulatory action, including questions regarding procedure, comments, or the substance of the proposal, may be directed to:

Lori Gillihan, Chief
Policy Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814
Phone: (916) 651-1043
Email: lori.gillihan@spb.ca.gov

The backup contact person for these inquiries is:

Carlos Gomez, Analyst
Policy Division
State Personnel Board
801 Capitol Mall
Sacramento, CA 95814
Phone: (916) 651-8350
Email: carlos.gomez@spb.ca.gov

Please direct requests for copies of the proposed text of the regulations, the initial statement of reasons, or other information upon which the rulemaking is based to Policy Division Chief, Lori Gillihan, at the above address.

AVAILABILITY OF RULEMAKING FILE:

The Board is maintaining a rulemaking file for the proposed regulatory action, which as of the date of this notice contains the following:

1. A copy of the text of the regulations for which the adoption is proposed in ~~strikeout~~ and underline;
2. A copy of this notice and statement of reasons for the proposed adoption; and
3. Any factual information upon which the proposed rulemaking is based.

If written comments, data or other factual information, studies or reports are received, they will be added to the rulemaking file. The file is available for public inspection during normal working hours at the State Personnel Board, 801 Capitol Mall, Sacramento, CA 95814. Items 1 through 3 are also available on the Board's website at www.spb.ca.gov under "What's New?" Copies may be obtained by contacting the person via the address, email, or phone number listed above.

AVAILABILITY OF CHANGED OR MODIFIED TEXT:

After considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications that are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Board adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of the person at the address indicated above. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available to the public.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS:

It is anticipated that the proposed regulations will be filed with the Office of Administrative Law and shall include a Final Statement of Reasons. Copies of the Final Statement of Reasons may be obtained from the contact person when it becomes available.

AVAILABILITY OF DOCUMENTS ON THE INTERNET:

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed on the Board's website at www.spb.ca.gov under "What's New?"